

Congress of the United States

Washington, DC 20515

May 5, 2020

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Secretary Mnuchin,

We continue to appreciate the guidance that the Treasury Department (Treasury) and the Internal Revenue Service (IRS) have issued to facilitate the implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Nevertheless, we are writing to express our concern with the position taken by Treasury and the IRS in Notice 2020-32, which is contrary to congressional intent.¹ Notice 2020-32 provides that otherwise deductible business expenses are not deductible if the taxpayer is the recipient of a Paycheck Protection Program (PPP) loan that is subsequently forgiven.² We believe the position taken in the Notice ignores the overarching intent of the PPP, as well as the specific intent of Congress to allow deductions in the case of PPP loan recipients.

The PPP was designed to provide critical relief to America's small businesses that are experiencing unprecedented economic disruption. The PPP was intended to provide a lifeline to allow these businesses to pay rent and keep employees on payroll, and to enable them to resume regular operations when it is safe to do so. Section 1106(i) of the CARES Act provides that a PPP loan recipient will not recognize taxable income if the loan is forgiven, in effect making the loan a tax-free grant. Additionally, as was expressed to Treasury during the development of the PPP, we did not intend to deny the deductibility of ordinary and necessary business expenses, nor did these small businesses expect to lose deductions for their business expenses when they applied for a PPP loan.

Providing assistance to small businesses, only to disallow their business deductions as provided in Notice 2020-32, reverses the benefit that Congress specifically granted by exempting PPP loan forgiveness from income. This interpretation means that whatever income a small business is able to produce will be taxed on a gross basis to the extent of the loan forgiveness, leaving substantially less after-tax capital for the swift economic recovery we hope is on the horizon.

Section 1106(i) was specifically included in the CARES Act to exclude from income loan forgiveness, which would otherwise be taxable, to provide a tax benefit to small businesses that received the PPP loan. Had we intended to provide neutral tax treatment for loan forgiveness, Section 1106(i) would not have been necessary. In that case, loan forgiveness generally would have been added to the borrower's taxable income, and the expenses covered by the PPP loan would be deductible, reducing taxable income by an offsetting amount and resulting in no

¹ Notice 2020-32, 2020-21 IRB 1.

² CARES Act, Pub. Law No. 116-136, § 1106(b).

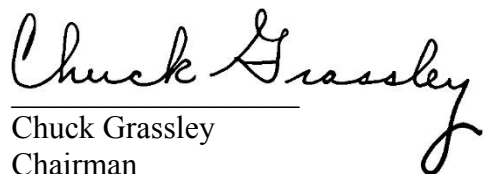
additional net income. Notice 2020-32 effectively renders Section 1106(i) meaningless. That, clearly, is contrary to the intent of Section 1106(i) and the CARES Act more generally.

In addition to disregarding congressional intent, we believe Notice 2020-32 is flawed in its analysis of the applicability of Section 265(a) of the Internal Revenue Code. Section 265(a)(1) applies to deny a deduction only if the deduction is allocable to a class of income that is “wholly exempt from the taxes imposed by this subtitle [of the Internal Revenue Code].” In this case, the deduction is not allocable to the exempt income resulting from the forgiven loan. The deductions for expenses that make a borrower eligible for loan forgiveness are attributable to the conduct of its business. Accordingly, they are properly allocable to the income produced by the business, not to the PPP loan forgiveness. Moreover, the loan forgiveness is not a class of income that is “wholly exempt from the taxes imposed by this subtitle.” The loan may or may not be forgiven, and the amount of the forgiveness is limited by a number of factors. Therefore, even putting aside clear congressional intent, we believe Section 265(a) should not be read to deny ordinary and necessary business deductions in this case.³

We urge you to reconsider this determination in light of congressional intent and the importance of maximizing liquidity for businesses receiving PPP loans to survive and recover from the ongoing health crisis.

We look forward to your prompt response and appreciate your attention to this important matter.

Sincerely,



Chuck Grassley
Chuck Grassley
Chairman
Committee on Finance
United States Senate



Richard E. Neal
Richard E. Neal
Chairman
Committee on Ways and Means
United States House of Representatives



Ron Wyden
Ron Wyden
Ranking Member
Committee on Finance
United States Senate

³ Similarly, such intent is a distinguishing factor and a key consideration in the case law cited in Notice 2020-32.